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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/002,645

10/31/2001

Jayanta Tewari

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10/25/2006

BAKER BOTTS L.L.P.
PATENT DEPARTMENT
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AUSTIN, TX 78701-4039

EXAMINER

DIVECHA, KAMAL B

ART UNIT

PAPER NUMBER

2151

DATE MAILED: 10/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/002,645

Applicant(s)

TEWARI, JAYANTA

Examiner

KAMAL B. DIVECHA

Art Unit

2151

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

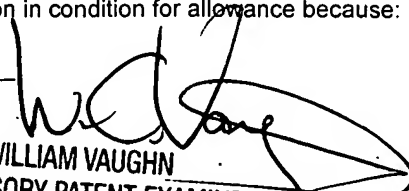
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 1-21.
Claim(s) withdrawn from consideration: NONE.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please see the attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____


WILLIAM VAUGHN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Response to Arguments

Claims 1-10, 12-16, 18, 20 and 21 are pending in this application.

Applicant's arguments filed October 03, 2006 have been fully considered but they are not persuasive.

In response filed, applicant argues in substance that:

- a. Babu does not disclose or suggest classifying a functionality of the at least one network device via the one network communication port based upon determined software application (remarks, page 3).

In response to argument [b] above, Examiner disagrees in light of the following:

At column 7 lines 65 to column 8 line 6, Babu teaches the process of querying the network device for basic device data that represents basic information about the device.

At column 13 lines 5 to column 14 line 10, Babu teaches “the values received in the detailed device data are then stored in tables of the database...In this way, the collection engine gathers information from many different network devices, each of which has different physical, hardware, software, and firmware characteristics” (i.e. devices are classified based on the received data).

At column 13 line 30 to column 14 line 10, Babu discloses change detection mechanism that detects, records, and reports on changes in the device information...the attributes value also can store information describing the nature of a change, such as a circuit card change, software reload, software update, etc.

Based on the above teachings, one of ordinary skilled in the relevant art would have discerned that the detailed device information collected during the query includes the

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information about the software and/or software application because without determining the current software running the network device, the process of detecting and determining the software update would not have been possible.

- b. Babu does not disclose or suggest “classify a functionality of the at least one network device...based upon network transmission characteristics of the at least one network device and the determined software application (remarks, page 11).

In response to argument [c], examiner disagrees at least for the following reasons:

First, the applicant has failed to show or prove that the specification does disclose the process of classify a functionality of the at least one network device...based upon network the determined software application.

Secondly, In addition to response to argument [a] above, Mauger, from the same field of endeavor discloses an advanced manager having a plurality of ports for coupling to a plurality of devices of the same or different types (see fig. 16) and being able to determine the type of the first device and the type of traffic to be communicated to the second device by inspecting signals received from the first device via the server (i.e. classifying which may include determining type of traffic transmitted by the network element based upon the transmission characteristics of the network element, as defined by applicant' specification page 11, and as taught by Mauger, col. 31 L1 1-24).

Mauger's communication apparatus is further able to identify traffic from each device type and manage the network device based upon the determined functionality (col. 31 L1 1-57).

Therefore, it can be clearly seen from the office action mailed on July 05, 2006, i.e. the response to arguments and the detailed mappings, that Babu in view of Mauger explicitly

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disclosed each and every limitation of the claims 1-21. As such, applicant arguments are non-persuasive.

c. It appears that patentable weight has not been given to the limitation “and the determined software” because, in the examiner’s view, applicant failed to show or prove that the specification discloses the process of classifying a functionality of the at least one network device...based upon the determined software application (remarks, page 3).

In response to argument [c], Examiner disagrees.

Every single limitation in the claims has been interpreted in view of applicant’s disclosure. The examiner has presented a proper rejection consistent with the applicant’s disclosure where no subject matter was ignored.

Furthermore, see the response to argument a in combination with response to argument b.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is 571-272-5863. The examiner can normally be reached on Increased Flex Work Schedule.

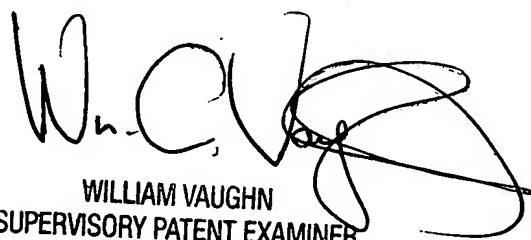
If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kamal Divecha
Art Unit 2151
October 23, 2006.



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